

section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

- (1) Simplification of issues;
 - (2) The necessity or desirability of amendments to pleadings;
 - (3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) Such other matters as may expedite the disposition of the proceedings.
- (b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will

be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or

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after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§719.18 Decisions.

(a) *Initial decision.* After considering the entire record in the case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington, D.C. 20520, to the Office of Chief Counsel at the address in §719.8, and to the

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respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.